1952. File No. O. Coop/52

p 18 E

Legal Deptt

A BRANCH

Subject:— Opinions under the Bombay Cooperative Societies Act, 1925.

File No. O. Coop/52

Gen. 194

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C O N T E N T S.

Legal Department File No. O. Co-operative/1952.

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3.	3990 13-3-52	Re: Conditions on which Govt. would subscribe to 50% of the share capital of an guarentee the payment of dividend and return of share capital of the proposed co-operative House finance Society. Conditism No. 9 of the conditions. Question whether the same could be legally imposed.	7-10.
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5.	7116 10-4-52 8695 17-4-52	Question whether under by-law 73 of the By-laws of the Bombay Co-operative Housing Finance Societies Ltd. it will be open to Govt. to nominate seven or eight Directors of the Board in the first instance and then later into nominate remaining 3 or 2 Directors.	15-18.
6.	8247 25-4-52 7065 5p5-52	Question i) Supposing a Society does not elect the heir or the legal representative of the deceased member as a member of the Society whether it would still be open to the Society to refuse to refund the value of the deceased member's shares, after the Society is exempted from the provisb to sec. 27(1) of the Bombay Co-op. Societies Act, 1925; and ii) if so, should it it not be really provided that in such case refund should obligatory.	19-22.

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7. 4677 5-5-52))13404 7-7-52 11557 12-7-52

ReP Enquiry into the affaird of a Co-op. Society under sec. 45 of the Bom. Co-op. Societies Act, 1925. Passing of order under sec. 45 by the Asstt. Registrar who has been delegated the powers of the Registrars, apportioning the cost of the enquiry to be recovered from different persons concerned.
Appeal by the person effected by the order on the grounds inter alia that -

1) the order was passed without their being heard; and
2) the Asstt. Registrar failed to mention the reasons for apportionment.

Question whetherfor the above-reasons the Asstt. Registrar's Order should be deemed to be void. 23-28.

8. 20345 29-8-52.

G.L.D.D.No. CS. A. 305/26681-D dt. 19/20-8-52 Re: Bombay Co-op. Societies Act, 1925. Appeals under against the order pas ed by the Asstt. Registrar, Co-op. Societies Ahmedabad regarding Sarhlej consumers' Co-op. Society, Ltd. (copies not taken). 29-30.

19. 20389 29-8-52 15411 19-9-52

Question whether the dues of a co-operative Society can be deducted under the terms of a bond executed by a Govt. servant from the gratuity amount payable to him.
(pl. see R.L.A.'s No. 1388 dt. 21-8-51). 31-32.

10. 16144 1-10-52.

Re; R.L.A.'s opinion No. 3900 dt. 13-3-52. Question whether it is feasible for Govt. to exempt the B.B.M. Co-operative Housing Finance Society from the provisions of rule 48 of the Bom. Co-op. Societies Rules, 1927 by virtue of sec. 67 of the Bom. Co-op. Societies Act, 1925. 33-36.

11. 23522 9-10-52

G.C., D.D. No. CSH 1652-D dt. 4-10-52. Re; Co-operative Societies contribution by - to the Public uiility concerns. (copies not taken). 37-38.

12. 28289 22-11-52. 20106 17-10-52

Question whether R.L.A.'s opinion No. 17237 dt. 17-10-52 modifies his opinion No. 12783 dt. 9-8-51.
Bom. Co-op. Societies Act, 1925- s. 54. 39-42.

13. 17237 17-10-52

Re: Settlement of the dispute between Shri. J.N. Dalal, Chairman of the Marsden Spg. and Wg. Mills Co-operative credit and supply society Ltd., and its employees under the Industrial Disputes Act.
Question whether such disputes could be settled under Industrial Disputes Act when a Special provision for arbitration and settlement of such disputes is made in the Bom. Co-op. Societies Act, 1925. 43-46.

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14.	28683 27-11-52		Re: Point raised by the President of the Surat Distt. Co-op. Bank that new sec. 17A inserted by Bombay Act XXIII of 1952 is inconsistent with sec. 6A inserted in the same Act. Amendment of sec. 17A. Question whether amendment is necessary.	47-50.
		20401 5-12-52.		
15.		17589 24-10-52. nor to c.c.	Question whether a sum set apart under section 42 of the Bombay Co-operative Societies Act, 1925 constitutes a public trust within the meaning of the Bombay Public Trusts Act, 1950.	51-56.
	27040 10-11-52			
		21626 15-12-52		
	(forwarding RLA's opinion No. 20536 dt. 8-12-52).			

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The view taken by the Tribunal is correct. Section 84-1A of the Bombay Co-operative Societies Act, 1925 which provides for an extension of the period of limitation by the appellate authority in all cases in which ~~kk~~ it is provided under this Act an appeal may be filed against any decision or order within a specified period, will have no application to applications, to be filed under section 84A(5) as such applications cannot be considered to be appeals.

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U.R. to D.D., No. 2709; dated the 19th February, 1952.

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The words "the Bombay Co-operative Societies Act, 1925 or the rules made thereunder or" appearing in the first two lines of the condition may be deleted as it would be ultra vires for the Society to agree to such a provision. The rest of the condition appearing to be in order. However, in view of Rule 48 of the Rules such a condition is superfluous.

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U.R. to D.D., No. 3900; dated the 13th March, 1952.

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Nomination of Board of Directors of Bombay Co-operative Housing Finance Society Ltd.

The question for consideration is whether under by-law 73 of the By-laws of the Bombay Co-operative Housing Finance Society, Ltd. it will be open to Government to nominate seven or eight Directors of the Board in the first instance and then later on to nominate thereamining 3 or 2 Directors.

2. By-law 72 provides that the business of the Bombay Co-operative Housing Finance Society Ltd. shall be carried on and managed by a Board of Directors constituted in the manner provided in clauses (a) to (e). By-law 73 provides:

> "Notwithstanding anything contained in by-law No. 72, the first Board of Directors shall be nominated by the Government of Bombay for a period of one year including theChairman who shall call the first Board meeting."

What by-law 73 contemplates is that the first Board of Directors instead of being elected by the electorate specified by in clauses (b) to (e), shall be a body nominated by Government. The non-obstante clause must naturally be confined only to the mode of appointment, viz., nomination as against election; and it cannot be extended also to the number, so as to vary the number prescribed by by-law 72. The first Board of Directors must, therefore, consist of ten members and not less; and they should be nominated, as far as possible, to represent the various categories in clauses (b) to (e) of by-law 72. There is no power in by-law 73 to make nominations piecemeal; they must all be made together so as to constitute the plenary Board of ten members.

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T.R. to D.D., No. 5893; dated the 17th April, 1952.

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If exemption is granted from the proviso there would be no specific provision requiring a Society to make payment of the value of share or interest of a deceased member in case the nominee of the deceased is not admitted a member or the heir or legal representative is not duly elected a member, although the society is expected to act according to rules of reason and justice and not arbitrarily in exercising the discretion vested in it under sub-section (1) of section 27 of the Bombay Co-operative Societies Act, 1925. If a ~~case~~ Society is exempted from the provision of the proviso to sub-section (1) of section 27 there would be nothing to make the payment to the nominee, heir or legal representative. Nor does it appear feasible to attach a condition to that effect at the time of granting exemption under section 67. It it is proposed to make the refund obligatory the proper course is not to grant the exemption from the proviso.

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U.R. to D.D., No. 7065; dated the 8th May, 1952.

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As a result of the enquiry held into the affairs of the Sarkhej Consumers Co-operative Society under section 43 of the Bombay Co-operative Societies Act, 1925, the Assistant Registrar of Co-operative Societies who has been delegated the powers of the Registrar passed an order under section 45 apportioning the cost of the enquiry to be recovered from different persons concerned. (Vide the order dated 28-8-1945, at page 181 of corresponding section). An appeal has been made on behalf of the persons affected by the order on the ~~same~~ ground inter alia that :-

(1) the order was passed without their being heard; and

(2) the Assistant Registrar failed to mention the grounds for apportionment.

The R.I.A. is requested to advise whether for the above reasons the Assistant Registrar's Order should be deemed to be void.

2. Section 45 of the Bombay Co-operative Societies Act, 1925, empowers the Registrar to apportionk the costs of an enquiry held under section 43. But this power is subject to the two provisos:

(1) that no order shall be ~~the~~ made unless the society or persons liable to ~~xx~~ pay the costs has or have been heard or has or have had a reasonable opportunity of being heard;

(2) that the Registrar shall state in writing under his own hand the grounds on which the costs are apportioned.

The first provise is based on the rule of natural justice that a man shall not be subject to to final judgment or to punishment without an opportunity of being heard. "A man cannot incur the loss of liberty or property for an offence by a

by a judicial proceeding until he has had a fair opportunity of answering the charge against him, unless the legislature has expressly or impliedly given an authority to act without that neces sary preliminary" (vide Broom's Legal Maxims, p. 66). An award made in violation of the above principle is liable to be set aside (ibid). The second proviso is intended to enable Government to decide appeals which may be made under section 64. On that ground also the order of the x Assistantx Registrar would seem to be defective. In the circumstances the order o. the Assistant Registrar is invalid.

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U.R. to D.D., No. 11887; dated the 12th July 1952.

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If the dues of a co-operative society cannot be deducted under the terms of a bond executed by a Government servant from the gratuity payable to him (see R.L.A.'s opinion No. 13588, dated 31-8-51) much less could they be done from the gratuity payable to his heir. The presumption made at X of A.A.F.D. note at page 1 ante is correct.

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U.R. to A.A.F.D., No. 18411/A; dated the 19th September, 1952.

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Opinion of the R.L.A.

It will be possible to exempt the Bombay Co-operative Farming Finance Society from the provisions of Rule 48 of the Bombay Co-operative Societies Rules, 1927. It is presumed that the power to remove the Committee-members will be provided independently in the bye-laws of the Society and in any other instrument of guarantee that may be executed by the Society as the power contained in Rule 48 will not be available to Government after the Society is exempted from its operation

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U.O. to D.D., No. 16144/S, dated the 1st October, 30

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Bombay Co-operative Societies Act, 1925. s. c. 54 - whether R.L.A.'s opinion No. 17237A, dated 17-10-52 modifies his opinion No. 13783 dated 9-8-51.

The R.L.A.'s opinion No. 17237A, dated the 17th October, 1952, is in modification of his opinion No. 13783 dated the 9th August, 1951. As pointed out in the former opinion disputes of the nature of collective bargaining would not fall within the scope of section 54 of the Bombay Co-operative Societies Act, 1925, and they will have to be settled under the Industrial Disputes Act. If it is desired that they should be settled under the Bombay Co-operative Societies Act, it will be necessary to amend that Act suitably.

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U.O. to D.D., No. 20106/A, dated the 20th November, 1952.

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The present reference has arisen out of the report of the Conciliation Officer to the Secretary to the Government of Bombay, Labour and Housing Department, to the effect that the dispute between Shri J.N.Dalal, Chairman of the Morarden Spinning and Weaving Mills Co-operative Credit & Supply Society Ltd., and its employees has been settled by conciliation under the Industrial Disputes Act. In view of that report the question has been raised whether such disputes could be settled under the Industrial Disputes Act when a special provision for arbitration and settlement of such disputes is made in the Bombay Co-operative Societies Act, 1925.

Under section 54 of the BombayCo-operative Societies Act, 1925 any dispute touching the business of a society between the society and the servants of the society can be referred to arbitration. When a domestic tribunal has been set up by the Act, it is but necessary that tribunal should have jurisdiction to decide all disputes between the society and its servants. 'Servant' as used in section 54 appears to have a wider meaning and may include all labourers of a society, even of an industrial undertaking, provided under the Bombay Co-operative society registered under the Bombay Co-operative Societies Act. However, section 54 of the said Act appears to contemplate disputes arising out of the terms and conditions of service as settled between the society and its servants. The Industrial Disputes Act contemplates disputes not only arising out of the terms and conditions of service but also disputes based on collective bargaining. Consequently, disputes of the nature of collective bargaining would not fall within the scope of section 54 of the Bombay Co-operative Societies Act, 1925. Section 54 of the Bombay

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Co-operative Societies Act does not appear to provide a remedy for settling disputes of that kind which could ordinarily be settled under the Industrial Disputes Act. An amendment of the Bombay Co-operative Societies Act would be necessary if it is desired that they should be got settled under that Act.

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U.O. to D.D., No. 17257 A, dated the 17th October, 1938.

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LEGAL DEPARTMENT.

The points raised by the President of the Surat District Co-operative Bank is that new section 17A inserted by Bombay Act XXII of 1958 is inconsistent with section 6A inserted in the same Act. The Registrar, Co-operative Societies, is of opinion that there is some force in the contention raised and it would be necessary to amend section 17A by the insertion of the words "subject to such restrictions as may be prescribed by rules and by-laws." If the apparent inconsistency between the two provisions can be resolved by the insertion of the words suggested by him, it does not appear that any amendment is necessary. Section 6A expressly lays down that a minor or lunatic who is not competent to contract cannot be a member of a society. It is true that section 17A provides that notwithstanding anything contained in that section, a minor or a person of unsound mind can inherit or otherwise acquire the rights of a member. Both the sections have to be read together and so read the only possible interpretation which can be put on section 17A is that a minor or a lunatic heir, although he cannot be a member of a co-operative society, cannot be debarred from inheriting what may be considered as the interest of the member. Section 17A is based on the principle contained in the Indian Partnership Act, according to which although a minor or a lunatic heir cannot be a member of a partnership, he is entitled to the benefits of the partnership. If the expression "right of a member" has given rise to any doubt, such doubt can be set at rest by making suitable rules and by-laws. Section 71(1) of the Bombay Co-operative Societies Act and clause (c) of sub-section (2) of that section would enable the making of suitable rules

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rules and by-laws in the matter.

The point raised by the President, Surat Cooperative Bank, that the Bombay Co-operative Societies Act has been so far amended 14 times and the time has come to overhaul it completely has much force. The Development Department may consider the question of undertaking the revision of the whole Act, instead of attempting to amend the Act in every session of the Legislature.

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Additional Secretary to Government.

U.R. to D.D., No. 20401/B, dated the 8th December, 1952.

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Section 42 of the Bombay Co-operative Societies Act, 1925, runs as follows:-

"With the approval of the Bombay Central Co-operative Institute and after the payments prescribed by sub-section (2) of section 39 (and section 39A have been made) any society may -

(a) set aside a sum not exceeding 20 per cent of its net profits; and
(b) utilise from time to time the whole of such sum in contributing to any public or co-operative purpose, or to a charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890."

2. It appears from the wording of the section that the Society has to set apart the sums for contributing to any public co-operative or charitable purposes and not for a charitable purpose only. There would be no intention to create a public trust of a charitable nature and monies would only be ear-marked for certain purposes. There is no obligation to use the moneys so set apart or any fixed part thereof for a charitable purpose. The obligation, if any, arises under a special law viz. the Bombay Co-operative Society Act, 1925.

3. If the Society contributes any sums to any charitable purpose, the Society will be only a donating body, but the sums set aside in the Fund would not be impressed with any trust of a charitable nature in the hands of the Society and therefore would not attract the provisions of the Bombay Public Trusts Act, 1950.

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U.R. to Charity Commissioner,

No. 20836/A, dated the 8th December, 1955.

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A copy of the R.L.A.'s opinion No. 20536, dated the 8th December, 1952, recorded in another case is forwarded herewith.

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U.R. to D.D., No. 21026/P, dated the 15th December, 1952.

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